

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
THE PRESERVE AT TWIN FALLS

THIS DECLARATION, made on the date hereinafter set forth, by Twin Falls Development, LLC, a Virginia limited liability company, hereinafter referred to as "Developer" (as defined herein), and acknowledged and executed by the undersigned lot owners who have purchased lots in The Preserve at Twin Falls, hereinafter referred to as "Lot Owners".

- W I T N E S S E T H -

WHEREAS, Developer is the owner of certain property in the County of Floyd, State of Virginia, which is more particularly described on Exhibit A attached hereto and Exhibit B plat; and

Whereas, Developer has deemed it desirable to incorporate the provisions of the Twin Falls Homeowners' Association, Inc., for the purpose of assessing and collecting an annual maintenance fee and for discharge of the responsibilities involved in maintaining said common maintenance areas and facilities and leased areas, including roads, entrance sign and lights, electricity and landscaping for same, and fencing.

NOW, THEREFORE, Developer hereby declares that all of the Property shall be held, sold, and conveyed subject to the

following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall touch, concern and run with the real property, and be binding on all parties having the right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
GENERAL PROVISIONS**

The Developer, does hereby, of its own free will, impose, for the protection of the value, desirability and attractiveness of the Property, in order that the same may be properly developed, certain restrictions, covenants and conditions which shall apply to all of the Parcels, which said restrictions, covenants and conditions are as follows, to-wit:

1. **DEFINITIONS:**

(a) Developer. As used in this Declaration of Covenants, Conditions and Restrictions, Developer shall be defined as Twin Falls Development, LLC or such other party which Developer assigns responsibility, in whole or in part, by a recorded document and defined therein as a "Developer."

(b) Property. The term property shall mean all or part of the real estate described in Schedule A attached hereto.

(c) Parcel. The term Parcel shall mean any subdivided portion of the property on which a dwelling can be erected.

(d) Association. The term Association shall mean and refer to the Twin Falls Homeowners' Association, its successors and assigns.

(e) Committee. The term Committee shall refer to the Architectural Review Committee as more particularly provided for this Article I, Section 6.

(f) Member. The term Member shall mean and refer to all owners in The Preserve at Twin Falls.

(g) Leased area. There is a 54.737 acres as more particularly shown on plat prepared by David B. Scott, Land Surveyor, dated January 13, 2005, which may be subject to a conservation easement. This tract will be leased to the Association for use by members of the Association and their guests. Members may be subject to the use restrictions imposed by the conservation easement, the lease and rules promulgated by Developer and the Association from time to time.

(h) Common Maintenance Areas. These areas shall include the landscaping designated by Developer (not individual residence landscaping) signage, lights and any fencing or walls installed by the Developer (not individual residence fencing), all community roads/trails including any roads in leased area and all bridges. It will also include portions of any creek and all drainage ditches and facilities located within any of the road rights of way, as well as any slopes, cuts or fills made by the Developer as a part of road construction.

(i) Additional Lands. This term shall include any lands in which Developer, as used under the terms of this agreement, has an interest which are contiguous to or in the approximate vicinity of the Property described herein. These lands shall not be subject to this Declaration until they are made a part of "the Property" by amendment to this Declaration.

(j) Community. Community as used herein shall apply to subdivided, numbered, residential parcels of the Property and shall mean all property located within the boundaries of the various recorded plats of Twin Falls.

2. APPLICABILITY: These restrictions shall apply to subdivided, numbered, residential parcels of the Property and may be incorporated with properties now or later owned by Developer (or an entity in which one or more of the principals is a principal of the Developer, or such party designed by Developer at the later date) adjoining the Property. All of the restrictions shall touch, concern, and run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to any Parcel.

3. TERM: These covenants are to touch, concern, and run with the land and shall be binding on all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded, after which time said covenants shall automatically extend for (2) successive periods of ten (10) years each, unless an instrument signed by a majority of the current Parcel owners has been recorded agreeing to change said covenants in whole or in part.

4. MUTUALITY OF BENEFIT AND OBLIGATIONS: These restrictions set forth herein are made for the mutual and reciprocal benefit of each and every Parcel and are intended to create mutual, equitable servitude upon each of said Parcels in favor of each and all of the other Parcels therein; to create reciprocal rights between the respective Parcel owners; to create a privity of contract and estate among Parcel owners, their heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other Parcels in the Property.

5. EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS: All Parcels shall be used for residential purposes only. No structures shall be erected, placed or permitted to remain on any Parcel other than one (1) detached, single family resident dwelling and such outbuildings as are approved by the Architectural Review Committee.

6. ARCHITECTURAL REVIEW COMMITTEE:

(a) An Architectural Review Committee consisting of three persons shall be appointed by the Developer to review all plans and specifications for improvements to all Parcels, and shall be given authority to make final decisions on all matters relating to these Covenants, Conditions, and Restrictions.

Developer shall be the exclusive appointing party of said Committee members so long as it owns any Parcel or portion of the Property. Thereafter, the three Committee members shall be elected by the Parcel Owners for terms of two years each. A Committee member must be a Parcel Owner in order to be elected.

(b) All plans and specifications for any structure, wall, fence, or any improvement whatsoever to be erected on or moved upon or to any Parcel, and the proposed location thereof on any Parcel, the construction material, the roofs and exterior color scheme including material colors, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, or additions thereto on any Parcel shall be subject to and shall require the approval in writing of the Architectural Review Committee (herein called "Committee"), before any such work is commenced. Plans shall be prepared in a format and with specifications as required by the Committee.

(c) There shall be submitted to the Committee two (2) complete sets of plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Parcel unless and until the final plans, elevations and specifications therefore have received such written approval as herein provided. The corners of all improvements must be staked on the parcel or the parcels prior to submission of plans and specifications to the Committee for approval.

(d) The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans, specifications and details with the approval or disapproval, endorsed thereon, shall be returned to the person submitting them and on the other copy thereof shall be retained by the Committee for its permanent files.

(e) **THE COMMITTEE SHALL SUCCEED TO THE DISCRETIONARY AUTHORITY OF THE DEVELOPER ONCE DEVELOPER HAS SOLD ALL PARCELS IN TWIN FALLS TOGETHER WITH ANY AREAS THAT MAY HAVE BEEN ANNEXED TO THE PRESERVE AT TWIN FALLS.** The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all of the

provisions of these Covenants, Conditions and Restrictions; if the design is not in harmony with the general surroundings of such Parcel or with adjacent buildings or structures; if the plans and specifications submitted are incomplete, or in the event that the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare, or rights of all or any part of the Property, or the Parcel owners. The decisions of the Committee shall be final.

(f) Neither the Committee nor any architect or agent thereof of the Developer shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, nor for any violation of any state or local code of ordinance.

(g) The Developer shall have the power and authority to allow deviations in the requirements of these Architectural requirements.

(h) Notwithstanding the complete compliance with all requirements set forth in subsections (a) through (g), Developer reserves the exclusive right to reject the proposed plans and specifications for any Parcel, in its sole discretion.

(i) The plans and specifications to be submitted to the Committee may be required to include the following; however, Developer shall be exempt from requirements set forth herein:

(1) Site plan, showing the location of all buildings, drives, walkways, decks, fences, patios and landscaping areas. Any future change or addition to the original plan approved by Developer must be resubmitted to Developer for approval. This indicates exterior color changes and changes in landscape;

(2) Elevation plans of front, back, and both sides of proposed improvements, showing the type of materials to be used for the roof, siding, foundation and windows; and further indicating the roof pitches on the elevations;

(3) A dimensional floor plan;

(4) A schedule of materials to be used on the exterior of the house and the finish color of that material;

(5) The name of the proposed builder of the residence, who should be registered and in good standing with the State Registration Board of Contractors, or furnish sufficient financial and job performance references that are acceptable to the Committee;

(6) A landscaping plan, showing proposed landscaping. It is desirable that any plan minimize the number of healthy sizeable trees to be removed and that the trees and other plantings be placed so as not to interfere with or obstruct sight at intersections. Shrubs and final plantings should be completed not later than one year after the completion of house. Plantings should also be maintained, with dead plantings being replaced as necessary. Developer reserves the right to specify what trees must be retained. Culvert pipe will be used on any driveway for necessary for drainage purposes. No clear cutting. Any clearing must be approved by Developer or Committee after Developer;

(7) Any non-conforming improvement may be corrected or re-installed correctly or to conformity standards by Developer without notice to or permission from any party, and the expense thereof shall be paid by the subject Parcel owner, and Developer may record a lien setting forth said expense among Floyd County land records against the subject Parcel and its owner;

## ARTICLE II GENERAL PROHIBITIONS AND RESTRICTIONS

1. All Parcels shall be used for residential purposes only. No Parcel shall be subdivided so as to create two or more Parcels from a single Parcel, unless the resulting Parcels will contain 25 acres or more in each resulting parcel and such subdivision must comply with the Floyd County Subdivision Ordinance then in effect. However, a Parcel may be divided and added to the adjoining Parcels, or boundary lines may be altered to allow for the best location of residences.

2. No temporary house, trailer, tent, garage or other outbuildings shall be placed or erected on any Parcel; provided, however, that the Developer may grant permission for any such temporary structure for storage or use during construction. No such temporary structure shall be used as a dwelling place.

3. All boats, trailers, travel homes or other camping or pleasure equipment shall be stored off the street and screened in a manner so as to minimize their visibility; where possible, out of site of any main road. So long as Developer owns any Parcel or any portion of the Property, the location of any such storage and screening must be approved by Developer or thereafter by the Committee.

4. All Parcels shall be kept clean and free of non-operating motor vehicles, garbage, junk, trash, debris, or any condition that might contribute to a health hazard, or any condition creating an unsightly environment.

5. Each Parcel owner shall maintain his Parcel and the area between the front Parcel line and the street and landscaping thereon, including timely lawn mowing. Developer reserves the right to perform maintenance on any Parcel where such maintenance is deficient, without permission from any party, and charge the cost thereof to the subject Parcel owner.

6. No trees measuring 8" or more in diameter at 36" from the ground shall be cut or moved without the approval of the Developer, unless the subject tree is located within ten feet of the dwelling or in the area of the permanent driveway.

7. No noxious, offensive or illegal activities shall be carried on any Parcel, nor shall anything be done to the Parcel that shall be or become an annoyance or nuisance to any other Parcel owner.

8. No animals or livestock except horses on approved parcels and common household pets shall be kept on any Parcel. Household pets shall not be kept if they are being bred or boarded for commercial purposes. No pet shall be allowed to remain on the property if it becomes a nuisance. No owner may have more than 4 household pets.

9. In order to implement effective insect and fire control, the Developer reserves for itself and its agents the right to enter upon any Parcel on which no landscaping plan has been installed, such entry to be made at the expense of Parcel owner, by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Developer detracts from the overall beauty, setting and safety of the Parcel. The Developer and its agents may likewise enter upon such a Parcel to remove any trash which has collected on such Parcel. The provisions in this subsection 9 shall not be construed to create an obligation on the part of the Developer to perform any act or service.

10. So long as Developer owns any Parcel or portion of the Property, no signs, except "for rent", "for sale", or a sign approved by the Developer, shall be erected or maintained inside or outside any residence on any Parcel except as may be required by law. However, the Developer shall have the right, and may give builders the right to erect Developer approved signs.

11. Any dwelling or outbuilding on any Parcel which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God, must be rebuilt, and all debris must be removed, and the Parcel restored to a sightly condition with reasonable promptness. In no event, shall debris remain longer than three (3) months after casualty.

12. No fence or walls will be permitted or be constructed without approval of the Committee. All fencing that runs along any road shown on the Map of The Preserve at Twin Falls or that would be clearly visible from any road must be board or split rail fencing. Other types of fencing such as wire pasture fencing would be acceptable in other areas not clearly visible from the road.

13. Radio, shortwave or electronic transmission or reception of any kind shall not be permitted on any Parcel if it causes interference of any kind to another Parcel owner. Exterior radio, no satellite dish antennas or television antennas shall be installed so as not to be unsightly. No satellite dish antennas or similar structures may be placed on any Parcel without the approval of the Developer or the Committee.

14. Every tank for the storage of fuel installed on a Parcel exterior shall be buried below the surface of the ground or landscaped out of sight. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be screened or so placed and kept as not to be visible from any street within the subdivision at any time. If a Parcel Owner is planning on storing such service items as lawnmowers, tractors, garden equipment, etc., outside of the dwelling, it must be stored in a barn or storage building approved by the Committee.

15. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened as to be minimally visible from any street. Location thereof shall be approved by the Committee.

16. All additional electric, telephone, cable TV or other utility lines shall be installed below ground. No additional overhead utility lines shall be permitted for any purpose.

17. No building shall be located on any Parcel nearer to the front Parcel line than 30 feet. However, Developer may require a greater setback. No building shall be placed within 30 feet of any side Parcel line. The Floyd County Building Code requirements shall prevail to determine the back building setback line, unless required otherwise by Developer. Where a setback line requirement is found to create undue hardship for a Parcel Owner, it may be changed with written consent of the Committee provided it is not in violation of the Floyd County Code.

18. No dwelling shall be erected on any Parcel having less than a minimum enclosed livable floor area as designated and approved by Developer prior to commencement of any construction.

19. Once construction of improvements is started on any Parcel, the improvements must be constructed of a substantial quality of antique, reclaimed or new materials, completed in accordance with plans and specifications, as approved by the Committee, within one (1) year from the date of commencement. No residence shall be occupied unless it has been substantially completed as specified by the plans and specifications, and a certificate of occupancy has been issued by the County of Floyd.

20. No unsightly ornamentation shall be permitted on a Parcel exterior. (Examples: painted rocks, etc.) The Committee shall have absolute discretion regarding what is deemed unsightly.

21. No exposed concrete, cinder or concrete block masonry retaining walls should be constructed on any Parcel.

22. All exterior surfaces of any Parcel improvement must comply with the following requirements:

(a) No exposed concrete or concrete masonry foundations shall extend above finish grade, except to comply with the provisions of the applicable building code;

(b) All wood siding to be stained shall be installed with galvanized aluminum nails or equivalent. All paint or stain colors use on exterior must be approved by the Committee;

(c) Steel windows and doors may be used provided they have a factory applied bronze or stain grade or enamel finish, and may not be left their natural color;

(d) All gutters and downspouts shall be in the same color as the trim color or roof color in the case of tin or copper or as approved by Developer;

(e) Only wood shakes, rigid asbestos shingles, tin, copper, slate or asphalt shingles shall be used as roofing materials. The minimum roof pitch permitted will be 5/12 (5" in 12" slope). However, Developer may require a higher pitch.

(f) Aluminum, cinder or concrete masonry block, concrete, stucco (except as approved by the Committee) asbestos or composition shingles shall not be used as exterior wall finish.

(g) Owners are encouraged to use colors that will blend with the natural surroundings such as browns, tans and other earth tones.

(h) Driveways must be gravel, surface treated or paved and well maintained with culvert pipe entrances where needed.

(i) Location of all residences, buildings and improvements shall be subject to the Committee approval and set backs shall be established on a case by case basis but in any event must comply with Floyd County Subdivision and Zoning ordinances.

23. Developers are not as concerned about the size of the dwellings that will be built as they are with the type of materials and construction features for each dwelling. For this reason, square footages will be listed as minimums within The Preserve with the final decision to rest with the Committee:

(a) A minimum of 1,200 square feet heated living space for a single story.

(b) A minimum of 1,600 square feet heated living space for a one and a half story.

(c) A minimum of 1,800 square feet heated living space for a two story.

(d) Detached guest residence will be permitted as will detached garages. Guest residences must contain at least 1,000 square feet of heated living space. Wherever a guest residence is built, the primary residence must be completed first.

24. So long as the Developer owns any Parcels or any portion of the Property, no Parcel owner may grant easements or extend utilities through existing easements without the approval of the Developer.

25. No all terrain vehicles (ATV) or motorized trail bikes will be allowed on the roads of The Preserve at Twin Falls, including the leased area, at any time. This will not prevent an owner of making use of these on their own tract so long as such usage does not constitute a nuisance to other owners in the Community. Golf carts or other such utility vehicles are permitted. Any question will be resolved by the Developer or the Committee once the Developer no longer owns lots in the Community.

26. No unlicensed or inoperable vehicles may be kept on any lot including car parts. No debris, trash or any other unsightly conditions shall be permitted on any lot at any time. In the event such a condition exists, the Committee shall have authority after providing notice to the owner to have the condition corrected by the removal and clean up of the area at the cost of the parcel owner.

27. Roadway vehicular speeds are not to exceed 20 miles per hour. If conditions exist snow mobiles will be allowed on the roads in the Community but not exceed a speed of 20 miles per hour.

28. Horses shall be permitted on parcels within the Community subject to the following conditions:

(a) No pasture shall be permanently used for horses unless there are adequate boarding facilities constructed and approved by the Developer and or the Committee.

(b) No overgrazing of paddock areas or pastures will be permitted.

(c) Horses may be kept on a temporary basis only unless there are adequate barn facilities constructed on the property and approved by the Developer or the Committee.

(d) All areas approved for pasture must be kept in a grassy condition, seeded, maintained and not overgrazed.

(e) Weed and brush control is mandatory on all pastures and open areas and pasture location must be approved by the Developer or the Committee.

29. No dusk to dawn lights will be permitted. All exterior lighting shall be designed to minimize scatter and directed away from adjoining properties. Low voltage lighting may be used but outdoor fluorescent lighting will not be permitted unless approved by the Committee. The primary consideration must be given to the impact of exterior light on

adjoining property owners and any exterior lighting plan must be submitted to the Committee for approval.

ARTICLE III  
HOMEOWNERS' ASSOCIATION

1. MEMBERSHIP and VOTING RIGHTS:

(a) Every owner of a Parcel in Twin Falls shall be a member of the Twin Falls Homeowners' Association, Inc., provided however, that any person or entity who holds an interest in a Parcel merely as security for the performance of an obligation shall not be a member, unless and until such person or entity has succeeded to such Parcel owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from ownership of any Parcel.

(b) The Association shall have two classes of voting membership:

(1) Class A: Class A members shall be all Parcel owners (with the exception of the Developer) and shall be entitled to one vote for each Parcel owned. When more than one person holds an interest in a Parcel, all persons shall be members. The vote of such a Parcel shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Parcel.

(2) Class B: Class B members shall be the Developer, or affiliate of the Developer, or their assigns. Class B members shall be entitled to two votes per parcel or parcels of land owned by Class B members plus two votes for each Parcel or parcel of land which it has conveyed to a Class A member. The Class B membership shall cease and terminate at such time that the Developer has conveyed the last Parcel it owns in The Preserve at Twin Falls,

and any additions thereto, to a Class A member, and at such time the Developer owns no additional lands as defined in Article I, Section 1(h).

**2. EFFECT OF ANNEXATION:**

(a) So long as Developer is a Class B member of the Association, if Developer or any member of Twin Falls Development, LLC (as herein defined) should develop additional lands contiguous to or in the approximate vicinity of the Property (as described in Exhibit A attached hereto) such additional lands may be annexed to the Property at any time prior to December 1, 2018, without the assent of the Class A membership. This addition of lands to "the Property" shall take effect up [on the recordation of an amendment to this Declaration of Covenants, Conditions and Restrictions describing the land to be added to the Property.

(b) in the event that any additional lands are annexed to "the Property" such additional lands shall be considered as included in "the Property" for all purposes of this Declaration and all voting of each class of membership of the Association. All voting by the owners hereunder shall be aggregated, it being intended that:

(1) Voting rights for real property that may be added by amended declaration need not be assigned a separate class for voting purposes;

(2) The Class B member shall have a majority of votes of the Association regardless of how much additional land is added to the Community so long as there is a Class B member.

**3. OBLIGATIONS OF THE ASSOCIATION:**

(a) Operate and maintain, for the use and benefit of all members of the Association all common maintenance areas;

(b) Maintain, reseed and mow the grass and replace all dead or destroyed landscaping in the common maintenance areas;

(c) Hire such professional maintenance people as are necessary to perform the functions of maintenance and upkeep on the common maintenance areas and leased area, including repainting of lamp posts, signs and fencing, road repair and bridge repair, drainage ditches and other drainage facilities.

(d) Maintain the street lights if an installed by Developer.

(e) Require any damaged or destroyed improvements on the common maintenance areas, any landscaping and decorative items to be reconstructed in the same architectural, engineering, design, including paint or color, and in the same manner as originally constructed;

(f) Pay all utility bills for entrance signs and lights;

(g) Prohibit any additional improvements or alterations on common maintenance areas except for landscaping approved by the Association. This provision does not apply to Developer;

(h) Prohibit any construction or painting whatsoever other than to maintain or reconstruct any improvements installed by the Developer on common maintenance areas and leased areas;

(i) Developer shall have the absolute right, without the permission of the Association, to change the architectural landscape, or decorative design to any extent whatsoever and/or make additional improvements to the common maintenance areas even after conveyance to a Class A Parcel owner without the permission of the Association or Parcel owner so long as Developer owns the Parcel;

(j) Prohibit any changes in the design, color, or content of the entrance signage which shall be maintained by the Association as originally installed by the Developer.

4. COVENANT FOR MAINTENANCE ASSESSMENT.

(a) Creation of lien and personal obligation for assessment; one time capital contribution. The Developer, for itself and its successors or assigns, and for each member, hereby covenants, and each member by acceptance of a deed or other transfer document therefore, whether or not it shall be so expressed in such deed, agrees to pay the Association the following fees:

(1) Annual Maintenance Assessment. On January 15 of each year following closing on the sale of each Parcel by Developer, the Association shall assess each Parcel owner, excluding the Developer, an annual maintenance fee of \$1,000.00, which fee shall be due on or before February 15 of the year of the assessment. This annual maintenance fee shall be prorated and collected at closing at the time of transfer from Developer to the new owner for the number of months remaining in that year. These assessment fees shall be deposited to the account of the Association and utilized by the association for discharging its maintenance responsibility as itemized under this Article. Each such assessment together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Parcel against which such assessment is made. The personal obligation for delinquent assessments shall be passed to the member successor in title, other than as a lien on the land, unless expressly assumed by them. The annual maintenance fee may be increased by the Developer, if they deem it necessary, but in no event may the fee be increased by more than 20% per year.

(b) Purpose of assessment. The annual maintenance assessment levied by the Association shall be used exclusively for the purpose of maintaining the common

maintenance areas as more particularly provided under this Article (Obligations of the Association) including maintenance, repair, and replacement of any improvements or landscaping, cost of labor, equipment, materials, and any other expenses necessary for repair or replacement of the common maintenance areas and facilities.

(2) Special Assessment. In addition to the annual maintenance assessment, the Association may levy in any year a special assessment (which must be fixed at one uniform rate for each lot) applicable to that year only, for the purpose of defraying in whole or in part the cost of any repair, maintenance, or replacement cost incurred by the Association for work to be done on common maintenance areas (including the leased property). Such special assessment would be for unanticipated costs for which there are not sufficient funds on hand in the Association accounts including any reserve accounts and shall require the approval of a majority of the owners, taking into account the voting formula as identified in Article III. Developer shall not be required to pay any assessments, annual or special, so long as the Developer is a Class B member of the Association.

5. ELECTION OF THE BOARD OF THE PRESERVE AT TWIN FALLS. No later than thirty (30) days after 100% of the Parcels in The Preserve at Twin Falls have been sold by the Developer, a special meeting of the Association shall be held at which time all Directors of the Association shall be elected by the membership. The Board shall consist of not less than three (3) nor more than five (5) members and the membership may provide for length of the term of each Board member.

6. DUTIES OF THE BOARD OF DIRECTORS. It shall be the primary duty of the Board of Directors to provide for assessment and collection of the annual maintenance fee. In the event the Board of Directors determines that it is necessary to change the amount of the annual assessment, notice shall be provided to each of the Parcel owners at least thirty (30) days prior to the time for collection of the change in the assessment, but in no event shall said fee be increased to an amount more than necessary to meet the

maintenance costs as provided under the obligations of the Association to maintain the common maintenance areas.

**ARTICLE IV  
MISCELLANEOUS**

1. Legal Action. In the event a purchaser of a Parcel files a suit against the developer and/or a Contractor hired by the Developer, pursuant to any terms and conditions of this Agreement, or pursuant to the construction of a residence on such a Parcel, the party filing such legal action shall be responsible for all court costs, all attorney's fees incurred by Developer and/or Contractor secured by Developer, if such legal action is unsuccessful. As used in this paragraph, **unsuccessful** shall be defined as a dispute being resolved in court action in a manner favorable to Developer and/or Contractor secured by Developer and contrary to any previous offer of settlement by Developer and/or a Contractor secured by Developer.

2. Seeding. Any land disturbed during construction on any Parcel shall be promptly seeded or landscaped to prevent erosion. Developer reserves the right to perform such seeding if not done by Parcel owner in a timely manner, and the cost thereof shall be charged to the subject Parcel Owner and a lien for such costs recorded among the Floyd County land records against the Parcel and its owners.

3. Enforcement. Enforcement shall be by proceedings at law of in equity against any person or persons violating or attempting to violate any covenant either to restrain violation and/or to recover damages. Developer reserves the exclusive right to perform any act set forth anywhere in this Declaration on behalf of a Parcel Owner who has failed to abide by any affirmative obligation set forth herein or who has violated any prohibition herein. Such act shall include but not be limited to any act of maintenance, landscaping, construction of a required Parcel improvement or removal or correction of a prohibited of a faulty Parcel improvement. All costs of such acts on behalf of Parcel owner, including interest, attorney fees, and recording taxes shall be charged to the subject Parcel owner, and a lien setting forth such costs may be recorded by Developer against the subject Parcel owner and Parcel among the Floyd County area land records. In addition, Developer may bring any appropriate legal action

against Parcel owner to enforce or to cure any breach of this Declaration or amendments thereto. In such event, Parcel owner shall pay for all of Developer's court costs, expense of litigation, including attorney's fees.

4. Future Roads. Except for Property and Parcels owned by Developer, or any entity in which one or more of the principals is a principal of the Developer, no street or road connecting the Property to adjoining lands may be constructed on any Parcel or portion of the Property unless such street or road is constructed by Developer, or any entity in which one or more of the principals written permission for such construction. T&J Investment of Roanoke, as the owner of Tract 21, William Neuhoff, as the owner of Tract 9, as well as the Developer shall be exempt from this covenant against future road building on their individual Parcels done to connect them with adjoining land as these were expressly negotiated conditions at the time of the sale of those two lots. The Developer shall have the absolute right to place a road to develop adjoining land over any recorded Parcel, so long as the Developer owns said Parcel.

5. Amendments. Developer hereby reserves the right to amend, modify, revoke, alter, expand and update the contents of this Declaration or amendments, or to add any real estate to the scope of this Declaration or amendments thereto, without the permission of any party. Any amendment or alteration to the Declaration shall take effect only after Developer, or any entity in which one or more of the principals is a principal of the Developer, has caused to be recorded an amended Declaration among the Floyd County land records. After Developer has sold all the Parcels that it owns in the Community as well as annexed lands if any, the Association may amend these Covenants, Conditions and Restrictions at a duly called meeting of the Association after a minimum of thirty (30) days written notice prior to any meeting called for the express purpose of amending the restrictions. Such amendment shall require a two-thirds affirmative vote of all owners in the Community.

6. Easements.

(a) Developer reserves the exclusive right to grant and dedicate easements and rights of way of any kind to any proper entity after recordation of any subdivision plat for any portion of the Property and future additions thereto. Developer reserves the right at any time until it sells its

last Parcel or all of the Property, to declare and use for its sole benefit and for the benefit of its assigns, a 15 foot drainage and/or utility easement. Said 15 foot easement shall be centered along any Parcel Boundary line, so that in any event, not more than 7.5 feet of the easement width shall lie on any one Parcel unless the boundary line is an outside boundary line in which event all 15' would be on the parcel. Such easements shall be established by the recordation of a plat showing the location thereof, with Developer's signature and such granting or dedication shall attach to any Parcel without the permission of the owner or mortgagee thereof.

(b) Developer also reserves the right to locate at any point within a Public Utility Easement ("PUE") located on a Parcel, gas and/or electric street lights together with the right to enter upon said PUE for the purpose of installing, repairing, maintaining, relocating, and removing such street lights.

7. Validity. Should any covenant, condition or restriction herein contained, or any sentence, clause, phrase or term of this instrument be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. In addition, if there is any contradiction between these restrictions and any governmental ordinances, laws or regulations of Federal, state or local agency, the latter shall prevail.

WITNESS the following signatures and seals:

TWIN FALLS DEVELOPMENT, LLC